

## Leasehold and Freehold Reform Bill

<b>Lead department</b>	Department for Levelling Up, Housing and Communities
<b>Summary of proposal</b>	The proposal is to introduce legislation to reform the leasehold and freehold sector, correcting the current power imbalance which negatively affects leaseholders who have limited control over their property or building, whilst maintaining the legitimate rights of freeholders.
<b>Submission type</b>	Impact assessment (IA) – 31 October 2023
<b>Legislation type</b>	Primary legislation
<b>Implementation date</b>	2025/26
<b>Policy stage</b>	Final
<b>RPC reference</b>	RPC-DLUHC-5311(1)
<b>Opinion type</b>	Formal
<b>Date of issue</b>	24 November 2023

### RPC opinion

<b>Rating<sup>1</sup></b>	<b>RPC opinion</b>
<b>Fit for purpose</b>	The Department has provided sufficient evidence to support the estimation of the EANDCB for those measures introduced by the Bill. The IA draws on appropriate data sources and evidence to underpin a proportionate assessment, sufficiently identifying the direct costs and benefits on business. Consideration is taken for small and micro businesses and mitigations are proposed to address likely disproportionate impacts. There are some areas for improvement, including further justification and evidence to support assumptions, further consideration of wider impacts such as competition and the overall impact on the housing and renting sector, as well as a more detailed monitoring and evaluation plan.

### Business impact target assessment

	<b>Department assessment</b>	<b>RPC validated</b>
<b>Classification</b>	Qualifying provision (IN)	Qualifying provision (IN)

<sup>1</sup> The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

<b>Equivalent annual net direct cost to business (EANDCB)</b>	£222.8 million	£222.8 million <i>(2019 prices, 2020 pv)</i>
<b>Business impact target (BIT) score</b>	£1,114.0 million	£1,114.0 million
<b>Business net present value</b>	-£1,701.8 million	
<b>Overall net present value</b>	£90.9 million	

## RPC summary

<b>Category</b>	<b>Quality<sup>2</sup></b>	<b>RPC comments</b>
EANDCB	<b>Green</b>	The IA includes a sufficient assessment of the impacts for measures enacted through the Bill. The Department has identified a range of impacts across the various reforms, providing an adequate level of evidence to support most assumptions and analysis.
Small and micro business assessment (SaMBA)	<b>Green</b>	The IA explains how exemption of SMBs would be inconsistent with achieving the policy objectives. The Department recognises some potential disproportionate impacts on smaller businesses and considers mitigations. The Department should extend their assessment to include medium-sized businesses.
Rationale and options	<b>Satisfactory</b>	The IA establishes a satisfactory rationale for intervention, explaining the issues with the current legislation supported by evidence from a number of investigations into the market. The assessment could have been strengthened through including evidence and learnings from Devolved Administrations in the UK or in other countries where similar reforms have taken place. The IA would also benefit from further explanation as to why existing reforms are insufficient in achieving the policy objectives.
Cost-benefit analysis	<b>Satisfactory</b>	The IA makes good use of data and evidence drawn from a range of sources. The annex helpfully outlines the assumptions and methodology underpinning the monetised costs and benefits. The IA could have been improved by including scenario analysis illustrating the impact of different levels of pass-through from freeholders to leaseholders.
Wider impacts	<b>Weak</b>	The Department provides some discussion on a limited range of wider impacts, including equalities, geographical, and environmental impacts. The IA should have expanded its assessment of wider impacts to include competition, trade, and investment impacts. Given the complexity of the reform, the IA would have benefited from a more comprehensive mapping of all groups impacted. The IA also should have further considered the impact on pension funds.
Monitoring and evaluation plan	<b>Weak</b>	The IA describes the Department's intention to undertake a process, impact, and value-for-money

<sup>2</sup> The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. The definitions of the RPC quality ratings can be accessed [here](#).

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evaluation but would benefit from more detail as to what these evaluations would cover.

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## Summary of proposal

Many leaseholders have very limited control over their property or building under existing legislation, with the freeholder making decisions about the management and maintenance of the building and passing on the costs to leaseholders. There is growing concern, documented by the Competition Market Authority (CMA) and the Housing and the Communities and Local Government Select Committee, that there is a power imbalance between leaseholders and freeholders, with leaseholders facing a lack of transparency over charges, escalating ground rents, unfair lease terms, as well as limited access to redress and an unequal liability for legal costs in disputes.

The Bill aims to address the power imbalance in the market and empower leaseholders to take greater control over their property or building, whilst maintaining the legitimate rights of freeholders. The Department considers three options within the IA:

- **Option 1:** Do nothing.
- **Option 2:** Non-legislative interventions.
- **Option 3:** Legislate and introduce a range of reforms, and future powers to be taken, through the Bill. (Preferred option). This includes:
  - Reforms to the valuation process to make it cheaper and easier for leaseholders to enfranchise. This includes the removal of marriage value, prescribing rates, and capping ground rent at 0.1 per cent of the freehold value.
  - Reforms to enable more leaseholders to buy their freehold or take up their management rights.
  - Reforms to strengthen rights for homeowners on freehold estates.
  - Reforms to make the buying and selling process easier and quicker.
  - Reforms to the costs leaseholders are expected to pay.

The IA covers a range of impacts across the policies considered. The main costs identified include the familiarisation costs to businesses (such as freeholders and private leaseholders, managing agents and lawyers) and costs to freeholders from reforms such as setting a 0.1% cap on ground rents during enfranchisement, and requiring freeholders to pay their own non litigation costs. The majority of these costs to freeholders are benefits to leaseholders and therefore net out in terms of the total net present value to society as a transfer. The IA monetises a benefit which is not a transfer, namely efficiency savings from simplifying the enfranchisement process (which accounts for the positive NPV), and discusses non-monetised benefits such as improved well-being for leaseholders from gaining greater security and control over their property or building.

The Department identifies the direct costs to business as transfers from freeholders to leaseholders, policy related costs including familiarisation and set-up costs, and registration costs paid by freeholders. The Department estimates an EANDCB for the primary legislation to be £159 million and £222.8 million for the primary and expected secondary legislation combined.

The Department estimates the business net present value (NPV) to be –£1,701.8 million of the Bill overall (including both enacting primary legislation and future expected secondary), and the total net present social value to be £90.9 million. The majority of the impacts arise from the reforms to the valuation process, in particular abolishing marriage value, which is the notional additional value that is gained when the landlord’s and leaseholder’s separate interests are “married” into single ownership.

## **EANDCB**

### **Identification of impacts**

The Department has provided a scenario 1b assessment for the Bill according to RPC guidance<sup>3</sup>, including an assessment for measures requiring additional secondary legislation. The IA identifies a good range of impacts across the various measures covered in the Bill as well as identifying the range of directly impacted stakeholders.

The IA helpfully provides two estimates for the EANDCB, one for primary legislation only and one for both primary and secondary legislation (Table 3.2). However, it is unclear from the IA as to which elements of the Bill are primary and which are secondary. The IA would benefit from clarifying which measures in the Bill are enabling vs enacting. The IA indicates that consultation is planned ahead of secondary legislation, including seeking views on options for setting valuation rates and the details for the standardised service charge form. It appears that some of impacts are non-monetised because they depend upon secondary legislation, the nature of which is presently unknown. If so, the Department will need to submit a further IA(s) to validate these impacts at that stage, subject to better regulation framework requirements.

With respect to the proposal to cap ground rent at 0.1 per cent of the freehold value (covered in Annex 2), the IA does not address the issue of whether freeholders would receive, or be able to seek, compensation for the associated loss. The Department would benefit from clarifying this position within the IA, as well as assessing the likelihood this could lead to legal challenge due to the nature of contracts between leaseholders and freeholders. The Department should, wherever possible, provide evidence, for example through any discussion of legal advice sought, that supports its assessment on this issue.

### **Direct and indirect impacts**

The IA sets out the expected impacts for each measure, identifying the groups impacted and whether the Department assesses the impacts to be direct or indirect. The Department’s assessment appears to be in line with RPC guidance; however, the IA would benefit from further discussion and explicitly referencing RPC guidance to make the classification clearer. For example, this could explain further how the efficiency savings (treated as indirect) arise.

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<sup>3</sup> RPC guidance on primary legislation IAs can be found [here](#).

## Non-monetised impacts

The Department provides a good level of monetisation and states where they are not able to monetise some of the impacts, either due to a lack of evidence or data or because aspects of some of the measures are yet to be consulted on and specified in secondary legislation. Whilst the RPC finds this to be a reasonable and proportionate approach, the IA could benefit from providing further justification as to why monetisation is not proportionate or possible in some instances. For example, this could include the benefit of decreased turnaround time for leaseholders from the introduction of a 15-day maximum turnaround time for freeholders and managing agents to provide sales information (Annex 7).

## SaMBA

### Scope

The IA attempts to identify the proportion of small and micro businesses in the range of stakeholders identified, including freeholders, managing agents, solicitors, and leaseholders who are landlords. In terms of freeholders, the Department uses the number of freehold titles owned by a company as an indicator of business size and argues that individual private freeholders that hold a small number of freeholds would be more likely to be considered micro or small. For leaseholders, the Department argues that those who are landlords to renting tenants are likely to be a micro business, where they let a small number of properties, and provides an indication of this proportion of landlords.

### Exemption and mitigation

The IA argues that exempting SMBs would undermine the policy objective of a simpler, fairer, and more transparent leasehold tenure. The IA does, however, recognise that the reform is likely to have a disproportionately higher impact on smaller businesses, in particular freeholders which experience the majority of the costs. The IA considers potential mitigations including allowing a sufficient transition period before key measures take effect and providing guidance and support to help freeholders and professional services meet new requirements. The Department also states they will consult on further secondary legislation measures and consider whether exemption is necessary in these cases, for example, in relation to the information requirements placed on freeholders. The RPC would expect to see further consideration of disproportionate impacts on SMBs and exemption and mitigation, where appropriate, in relation to secondary legislation.

#### *Medium-sized business exemption*

The IA does not include an assessment of the impacts upon MSBs. The Department, in line with recent government guidance, should include an assessment of the scale of impact upon MSBs and proportionately discuss the possibility of an exemption.

## Rationale and options

### Rationale

The IA establishes a satisfactory rationale for intervention, explaining the issues with the current legislation causing a power imbalance between leaseholders and freeholders, resulting in leaseholders having limited control over their property and bearing disproportionate costs. The case for intervention is supported by evidence from a number of investigations into the market, including several from the CMA and the Housing, Communities and Local Government Select Committee (paragraph 21). Given the proposal covers England and Wales, the rationale could have been strengthened through including evidence and learnings from the other Devolved Administrations or other countries where similar reforms have taken place.

The IA helpfully includes a summary of previous reforms and briefly states that these have not gone far enough to address the issues in the market. The IA would have benefited from further justification and evidence that existing legislation is insufficient in achieving policy objectives, especially since some reforms have been in place for a short period of time (this would include the Leasehold Reform (Ground Rent) Act, which commenced in June 2022).

### **Options**

The IA includes a non-regulatory option and provides some discussion as to why this option has been dismissed. The IA could have been improved by discussing why alternative regulatory measures, other than the package of proposals taken forward, were dismissed. For example, the IA states that commonhold is an alternative to leasehold, however, has failed to take off due to flaws in the legal framework (paragraph 19). The Department could have explained why a more targeted reform of commonhold was dismissed as an option. As mentioned above, the IA would also benefit from case studies of similar measures in other countries.

## **Cost-benefit analysis**

### **Evidence and data**

The IA makes good use of data and evidence available from a range of sources, including surveys, administrative data, and consultations (outlined in paragraph 92).

### **Modelling**

The annex helpfully outlines the assumptions and methodology underpinning the monetised costs and benefits. The IA identifies the potential for pass-through, whereby freeholders and/or managing agents who bear the majority of the costs are likely to pass some of these onto leaseholders through increased management fees. The Department has not monetised this cost due to not having a reliable estimate for the proportion which will be passed through. Whilst this is a reasonable approach, the IA could have benefited from including scenario analysis illustrating the impact of different levels of pass-through.

### **Uncertainty, risk and assumptions**

The IA helpfully acknowledges uncertainties underpinning the analysis and provides sensitivity analysis to test these uncertainties, including switching values analysis. As mentioned above, the efficiency savings from simplifying the enfranchisement



process account for the overall positive NPV. This is the largest monetised indirect benefit of the proposal which is not a transfer. Whilst Annex 2 provides some explanation on how this is estimated, the Department should have provided more justification for assumptions used, for example, the assumption that after the reform valuers will be used in around 20 per cent of lease extensions and 60 per cent of collective enfranchisements (paragraph 143). This assumption does not appear to have been tested, which the IA would have benefited from.

The IA could benefit from providing further justification for some assumptions as well as a more detailed risk assessment. For example, under the reforms to enable more leaseholders to buy their freehold or take up their management rights, one measure is to increase the non-residential limit from 25 per cent to 50 per cent for collective enfranchisement and right to manage claims (see Annex 3). This is a substantial increase in the limit and whilst the IA notes the risk of a decrease in investment and development in mixed-use buildings, the Department does not provide sufficient justification as to why this risk is unlikely to materialise. Given evidence showed stakeholders have expressed concern over this proposal, the IA would benefit from a more detailed risk assessment drawing on evidence where possible.

## **Wider impacts**

The Department provides some discussion on a limited range of wider impacts including equalities impacts, geographical impacts, and environmental impacts. The IA would benefit from further discussion in relation to the impacts outlined below. Given the complex nature of the reforms, the IA would also benefit from clearly mapping out all wider groups impacted, not just immediate stakeholders. This could be aided by a 'theory of change' model.

### **Competition**

The Department has not included an assessment of the impact upon competition. The IA would be strengthened by considering whether the reforms are likely to have a positive or negative impact on competition in the market, drawing on the relevant reviews by the CMA.

### **International trade and investment**

The IA indicates on the covering sheet that the reforms are likely to have an impact on international trade and investment. This issue should be addressed within the wider impacts assessment.

### **Supply-side impacts**

The IA states that there is a concern among freeholders and developers that the reforms may make leasehold developments less attractive to investors, potentially resulting in a shift towards building more properties to rent (paragraph 121). The Department argues that it does not expect a significant impact on the supply of leasehold properties due to the current and anticipated high demand for residential properties. The IA notes some evidence to support these claims including the IA for the Leasehold Reform (Ground Rent) Act 2022, which anticipated a low risk of an

impact on supply as some developers had already demonstrated their ability to change their financial models in preparation for the introduction of the legislation. Whilst this reasoning may apply to the proposed reforms, the IA would benefit from further discussing possible impacts on developer incentives and how this may impact supply in the rental market.

### **Pension funds**

The IA briefly recognises that pension providers often invest in freeholds for the ground rent income and that this will be impacted by the reforms (paragraph 130). The Department has not fully assessed the potential impact on pension funds of the reforms. This impact should be discussed further and supported by evidence where possible.

## **Monitoring and evaluation plan**

The Department have not formally committed to undertaking a PIR, although it does state an intention to monitor and evaluate the leasehold reforms. The IA notes that the approach to M&E will mirror that set out in the Department's own evaluation strategy, and will comprise of impact, process, and value-for-money (VFM) evaluations and that further detail on specific outcomes, metrics and evaluation questions will be set out in the M&E plan. The IA briefly states potential data sources for the evaluation and the Department's intention to improve data collection for future monitoring and evaluation of the reform. The IA would benefit from further explanation, especially with regards to the process and value for money evaluations, for example, key questions the evaluations would address. The RPC would expect to see a more detailed M&E plan for the secondary legislation IAs.

### **Regulatory Policy Committee**

For further information, please contact [regulatoryenquiries@rpc.gov.uk](mailto:regulatoryenquiries@rpc.gov.uk). Follow us on Twitter [@RPC\\_Gov\\_UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](#) or consult our website [www.gov.uk/rpc](http://www.gov.uk/rpc). To keep informed and hear our views on live regulatory issues, subscribe to our [blog](#).